

## Chapter 3.48

### TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE

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**3.48.010 Definitions.** The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

“Gross charges” means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the city, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs, or any other expense whatsoever. In case credit is extended, the amount thereof shall be included only as and when paid. Gross charges for private line service shall include charges imposed at each channel point within the city, charges for the channel mileage between each channel point within the city, and charges for that portion of the interstate interoffice channel provided within the city. However, “gross charges” shall not include:

- A. Any amounts added to a purchaser's bill because of a charge made under:
  - 1. The fee imposed by this chapter;
  - 2. Additional charges added to a purchasers bill under ILCS Ch. 220, Act 5, §§ 9-221 or 9-222;
  - 3. The provisions of ILCS Ch. 65, Act 5, § 8-11-17;
  - 4. The tax imposed by the Telecommunications Excise Tax Act (ILCS Ch. 35, Act 630, §§ 1 et seq.);
  - 5. Any 911 surcharges; or
  - 6. The tax imposed by Section 4251 of the Internal Revenue Code;
- B. Charges for a sent collect telecommunication received outside the city;
- C. Charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes but is not limited to the use of

calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a timesharing agreement;

D. Charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are disaggregated and separately identified from other charges;

E. Charges to business enterprises certified under ILCS Ch. 220, Act 5, § 9-222.1 to the extent of such exemption and during the period of time specified by the city;

F. Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;

G. "Bad debts" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made;

H. Charges paid by inserting coins in coin-operated telecommunications devices; or

I. Charges for telecommunications and all services and equipment provided to the city.

"Public right-of-way" means any municipal street, alley, water or public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the city has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. The term "public right-of-way" shall not include any real or personal city property that is not specifically described in the previous sentence and shall not include city buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.

"Retailer maintaining a place of business in this state" and any like term means and includes any retailer having or maintaining within the state, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business, or any agent or other representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this state.

"Sale of telecommunications at retail" means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration, other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer, for their use or consumption and not for sale.

"Service address" means the location of telecommunications equipment from which

telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems and the like, the term “service address” shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

“Telecommunications” includes but is not limited to messages or information transmitted through use of local, toll, and wide-area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities. Unless the context clearly requires otherwise, the term “telecommunications” shall also include wireless telecommunications, as defined in this section. The term “telecommunications” shall not include value-added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission. The term “telecommunications” shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by the provider to the ultimate retail consumer who originates or terminates the end-to-end communications. Retailer access charges, right of access charges, charges for use of intercompany facilities, and all telecommunications resold in the subsequent provision and used as a component of, or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. The term “telecommunications” shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (41, USC § 521 and following), as now or hereafter amended, or cable or other programming services subject to an open video system fee payable to the city through an open video system as defined in the rules of the Federal Communications Commission (47 CDF 76.1550 and following), as now or hereafter amended.

A. Telecommunications provider means:

1. Any telecommunications retailer; and
2. Any person that is not a telecommunications retailer who installs, owns, operates or controls equipment in the public right-of-way that, is used or designed to be used to transmit telecommunications in any form.

B. Telecommunications retailer, retailer and carrier include every person engaged in the business of making sales of telecommunications at retail as defined in this section. The city may, in its discretion, upon application, authorize the collection of the fee imposed by this chapter by any retailer not maintaining a place of business within this state, who, to the satisfaction of the city, furnishes adequate security to ensure collection and payment of the fee. When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the city.

C. Wireless telecommunications includes cellular mobile telephone services, personal wireless services as defined in section 704(C) of the Telecommunications Act of 1996 (Public Law 104-104), 42 USC § 332(c) (7), as now or hereafter amended, including all

commercial mobile radio services, and paging services.  
(Ord. 2003-5, 2002).

**3.48.020 Registration of telecommunications providers.**

A. Required. Every telecommunications provider shall register with the city within 30 days after becoming a telecommunications provider, on a form to be provided by the city; provided, however, that any telecommunications retailer that has filed a return pursuant to Section 3.44.060 shall be deemed to have registered in accordance with this section.

B. Changes in information. Every telecommunications provider who has registered with the city pursuant to subsection A of this section has an affirmative duty to submit an amended registration form or current return as required by Section 3.48.040C, as the case may be, to the city within 30 days from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the city.

(Ord. 2003-5, 2002).

**3.48.030 Fee imposed.** A. A city telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers, as a percentage of all gross charges charged by the telecommunications retailer to service addresses within the city for telecommunications originating or received in the city, in the amount established of 1% of such charges.

B. Upon the effective date of the infrastructure maintenance fee authorized in this chapter, the city infrastructure maintenance fee authorized under this chapter shall be the only fee or compensation for the use of all public rights-of-way within the city by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this chapter does not, however, serve as a limitation on the levying of any taxes or imposition of any fees otherwise authorized by law.

C. The city telecommunications infrastructure maintenance fee authorized by this section shall be collected, enforced, and administered as set forth in Section 3.48.040.  
(Ord. 2003-5, 2002).

**3.48.040 Collection, enforcement and administration.** A. A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the city infrastructure maintenance fee attributable to that customer's service address.

B. Unless otherwise approved by the Mayor, the infrastructure maintenance fee shall be remitted by the telecommunications retailer to the city not later than the last day of the month subsequent to the month in which a bill is issued to the customer; provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the city infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.

C. Remittance of the municipal infrastructure fee to the city shall be accompanied by a return, in a form to be prescribed by the Mayor, which shall contain such information as the Mayor may reasonably require.

D. Any infrastructure maintenance fee required to be collected pursuant to this chapter and any such infrastructure maintenance fee collected by such telecommunications

retailer shall constitute a debt owed by the telecommunications retailer to the city. The charge imposed under subsection A of this section by the telecommunications retailer pursuant to this chapter shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.

E. If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this chapter, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this chapter, from the telecommunications retailer who made the erroneous payment; provided, however, the Mayor may request, and the telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than three years after the date of the erroneous payment unless:

1. The credit is used only to offset a claim of underpayment made by the city within the applicable statutory period of limitations; and
2. The credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of limitations.

F. Amounts paid under this chapter by telecommunications retailers shall not be included in the tax base under any of the following acts:

1. Gross charges for purposes of the Telecommunications Excise Tax Act;
2. Gross receipts for purposes of the municipal utility tax as prescribed in ILCS Ch. 65, Act 5, § 8-11-2;
3. Gross charges for purposes of the municipal telecommunications tax as prescribed in ILCS Ch. 65, Act 5, § 8-11-17;
4. Gross revenue for purposes of the tax on annual gross revenue of public utilities prescribed in ILCS Ch. 220, Act 5, § 2-202.

G. The city shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this chapter to determine whether the telecommunications retailer has properly accounted to the city for the city infrastructure maintenance fee. Any underpayment of the amount of the city infrastructure maintenance fee due to the city by the telecommunications retailer shall be paid to the city, plus 5% of the total amount of the underpayment determined in an audit, plus any costs incurred by the city in conducting the audit, in an amount not to exceed 5% of the total amount of the underpayment determined in an audit. Such sum shall be paid to the city within 21 days after the date of issuance of an invoice for such sum.

H. The Mayor, or his or her designee, may promulgate such further or additional regulations concerning the administration and enforcement of this chapter, consistent with its provisions, as may be required from time to time, and shall notify all telecommunications retailers that are registered pursuant to Section 3.48.020 of such regulations.

(Ord. 2003-5, 2003).

**3.48.050 Compliance with other laws.** Nothing in this chapter shall excuse any person from obligations imposed under any law, including but not limited to:

- A. Generally applicable taxes;

B. Standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to freestanding towers and other structures upon the public rights-of-way, as provided;

C. Any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and

D. Compliance with any ordinance or provision of this code concerning uses or structures not located on, over, or within the right-of-way.

(Ord. 2003-5, 2002).

**3.48.060 Validity of existing franchises and licenses.** Any franchise, license, or similar agreement between telecommunications retailers and the city entered into before the effective date of this chapter regarding the use of public rights-of-way shall remain valid according to and for their stated terms, except for any fees, charges or other compensation to the extent waived.

(Ord. 2003-5, 2002).

**3.48.070 Waiver of charges under existing franchises and licenses; effective date of fee.** A. The city hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the city by a telecommunications retailer pursuant to any existing city franchise, license, or similar agreement with a telecommunications retailer during the time the city imposes the telecommunications infrastructure maintenance fee. This waiver shall only be effective during the time the infrastructure maintenance fee provided for in this chapter is subject to being lawfully imposed on the telecommunications retailer and collected by the telecommunications retailer from the customer.

B. The City Clerk shall send a notice of the waiver by certified mail, return receipt requested, to each telecommunications retailer with whom the city has a franchise.

C. The city infrastructure maintenance fee provided for in this chapter shall become effective and imposed on the first day of the month not less than 90 days after the city provides written notice by certified mail to each telecommunications retailer with whom the city has an existing franchise, license, or similar agreement that the city waives all compensation under such existing franchise, license, or similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the city. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence.

(Ord. 2003-5, 2002).

**3.48.080 Effective date.** This chapter shall be in full force and effect upon its adoption by the City Council of the City of Hoopeston.

(Ord. 2003-5, 2002).